

## ISSUE 9E: WHO APPROVED THE PUBLICATION OF THE DRAFT?

**FINDING 9E:** (b) (6) approved (b) (6) draft book for publication; however, his approval depended upon (b) (6) favorable review.

**ANALYSIS 9E:** (b) (6) and (b) (6) both denied that they approved (b) (6) draft book for publication (Exhibit 150, pp. 72-74; Exhibit 79, pp. 42-44, 89-90; Exhibit 124); however, several facts support the conclusion that (b) (6) approved (b) (6) draft book for publication, and that he did so based largely on (b) (6) favorable review. First, (b) (6) sent (b) (6) and (b) (6) several emails in which (b) (6) stated or implied that (b) (6) needed their approval to publish (b) (6) draft book.<sup>29</sup> Second, (b) (6) clearly waited for and relied upon (b) (6) review in completing his own. Third, (b) (6) clearly implied that his approval was required in his 28 December 2009 email to (b) (6).<sup>31</sup> Fourth, (b) (6)

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(Exhibit 149).

<sup>29</sup> On 30 November 2009, (b) (6) sent (b) (6) and (b) (6) an email in which (b) (6) inquired when (b) (6) "might be able to complete the classification review" of his draft book "so that (b) (6) [could] sign off on it, as [his] supervisor per AR 530-1 OPSEC..." (Exhibit 141); on 23 December 2009, (b) (6) sent (b) (6) an email in which he stated that he knew that (b) (6) "is the one who will have to sign off on the review" (Exhibit 145); and, on 27 December 2009, (b) (6) sent (b) (6) an email in which (b) (6) requested (b) (6) "concurrence and approval for...publishing [his] book" and stated: "(b) (6)

(b) (6) (Exhibit 146).

<sup>30</sup> On 27 December 2009, (b) (6) sent (b) (6) an email in which (b) (6) indicated that he "understood" that (b) (6) would be forwarding (b) (6) review, along with the emails they had exchanged "regarding classification issues" to (b) (6) for his review (Exhibit 172) and, on 4 May 2010, (b) (6) sent BG LeDoux an email in which he stated:

(b) (6)

(b) (6)

(Exhibit 124). In addition, (b) (6) specifically referenced (b) (6) review and his discussions with (b) (6) in his 4 January 2010 MFR (Exhibit 151), and he testified that he sought (b) (6) legal counsel and relied upon (b) (6) review, as well as (b) (6) discussions and email exchanges with (b) (6), in completing own review (Exhibit 79, pp. 19-22, 42-44, 48-49, 72, 78-79, 87-90, 109; Exhibit 111, pp. 9-13).

<sup>31</sup> In the 28 December 2009 email, (b) (6) stated:

(b) (6)

specifically stated in his 4 January 2010 review of (b) (6) draft book that: (b) (6), (b) (5)

(Exhibit 151)(emphasis added). Fifth, (b) (6) acknowledged in his 11 May 2010 email to BG Le Doux that he provided "the security/OPSEC concurrence" for (b) (6) draft book (Exhibit 124). Finally, and perhaps most importantly, (b) (6) acknowledged in his 30 November 2010 interview that (b) (6) draft book would not have been published without his and (b) (6) favorable reviews (Exhibit 79, p. 90).

#### **ISSUE 9F: WHAT WAS EACH REVIEWER'S AND THE APPROVER'S KNOWLEDGE OF THE PRE-PUBLICATION REVIEW RULES REFERENCED IN PARAGRAPH 8 ABOVE?**

##### **FINDING 9F:**

- Both (b) (6) and (b) (6) correctly understood that a legal/ethics review by a qualified Judge Advocate was required to determine whether (b) (6) draft book complied with 5 C.F.R. § 2635, *Standards for Ethical Conduct for Employees of the Executive Branch*, and DOD 5500.7-R, *Joint Ethics Regulation*, prior to the book's publication.
- Both (b) (6) and (b) (6) generally understood that AR 530-1, *Operations Security (OPSEC)*, required (b) (6) immediate supervisor and the 94<sup>th</sup> DIV's OPSEC officer to review (b) (6) draft book to ensure that it did not contain OPSEC information prior to the book's publication; however, neither (b) (6) nor (b) (6) understood what to do if the command lacked a qualified OPSEC officer. Moreover, neither (b) (6) nor (b) (6) fully grasped the scope or the depth of the required OPSEC review, or how it related to the required security review.
- Neither (b) (6) nor (b) (6) knew that Department of Defense Directive (DoDD) 5230.29, *Clearance of DoD Information for Public Release*, superseded Army Regulation 360-1, *The Army Public Affairs Program*, paragraphs 6-6c and 6-6d, because they did not review the DoDD.<sup>32</sup> Therefore, neither (b) (6) nor

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(b) (6)

(Exhibit 149)(emphasis added).

<sup>32</sup> AR 360-1, paragraphs 6-6c and 6-6d, state that:

c. Unofficial materials do not require clearance. These include materials produced on personal time, using personal equipment and open sources. Unofficial letters to the editor, book or similar reviews, and works of fiction (to include those based upon real events) do not need clearance. It is the author's responsibility to ensure security is not compromised. Information that appears in open sources does not constitute



(b) (6) knew that DoDD 5230.29, paragraphs 4f and 4g, required non-active duty members of the Reserve components to use the DoD security review process to ensure that information they submitted for public release did not compromise national security if the information met the criteria in Department of Defense Instruction (DoDI) 5230.29, *Security and Policy Review of DoD Information for Public Release*,<sup>33</sup> even if they prepared the information while acting in a private capacity, and not in connection with their official duties. Similarly, neither (b) (6) nor (b) (6) knew that DoDI 5230.29 required the submission of (b) (6) draft book through Headquarters Department of the Army (HQDA), Office of the Chief of Public Affairs (OCPA), to the Chief, Office of Security Review (OSR), for review prior to the book's publication.

- Neither (b) (6) nor (b) (6) understood the need to conduct a separate security review for classified information IAW AR 380-5, *Department of the Army Information Security Program*, and the non-disclosure agreements that (b) (6) had signed during the course of (b) (6) career.

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declassification. The combination of several open source documents may result in a classified document.

d. Manuscripts or speeches by retired personnel or members of the reserve components not on active duty are not subject to review and clearance.

<sup>33</sup> DoDI 5230.29, Enclosure 3, paragraph 1, states:

1. CLEARANCE REQUIREMENTS

a. Criteria. Official DoD information that is prepared by or for DoD personnel and is proposed for public release shall be submitted for review and clearance if the information:

\* \* \* \* \*

(2) Is or has the potential to become an item of national or international interest;

(3) Affects national security policy, foreign relations, or ongoing negotiations;

(4) Concerns a subject of potential controversy among the DoD Components or with other Federal agencies;

\* \* \* \* \*

b. Critical Topics. Submit for review if proposed information addresses any of the following subjects or affects the operations security thereof:

\* \* \* \* \*

(2) Military operations and significant exercises of national or international significance.

(3) Command, control, communications, computers, and intelligence; information operations; weapons of mass destruction; improvised explosive devices; and computer security.

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## ANALYSIS 9F:

- **Legal/Ethics Review:**

(b) (6): In (b) (6) 21 November 2010 interview, (b) (6) indicated that an ethics review of (b) (6) draft book was required because “the events that (b) (6) [was] talking about [occurred] while (b) (6) was on federal service,” and that the research (b) (6) and (b) (6) subordinate conducted “indicated that an ethics review is what needed to be done” (Exhibit 86, pp. 43-44). In addition, (b) (5)

[REDACTED]

(b) (6) generally understood that a legal/ethics review of (b) (6) draft book by a qualified Judge Advocate was required.<sup>34</sup> In an email to BG Le Doux, dated 11 May 2010, (b) (6) stated that he advised (b) (6) of the need for ethical and legal reviews of (b) (6) draft book on or about 17 March 2009 when (b) (6) first informed (b) (6) that (b) (6) was writing a book about (b) (6) deployment experiences (Exhibit 124). In addition, (b) (6) stated in his 30 November 2010 interview that he was aware of the requirement for an ethics review of (b) (6) draft book, and that he deferred to (b) (6) to complete this review<sup>35</sup> (Exhibit 79, p. 109).

- **OPSEC Review:**

(b) (6) generally understood that AR 530-1 required (b) (6) immediate supervisor (*i.e.*, (b) (6)) and the command's OPSEC officer to review (b) (6) draft book prior to publication (Exhibit 86, p. 23; Exhibit 150, p. 53); however, (b) (6) did not understand who was required to perform the OPSEC officer's review if the command did not have an OPSEC officer. (b) (6) simply assumed that (b) (6) review would suffice<sup>36</sup> (Exhibit 86, pp. 23-24). In addition,

<sup>34</sup> Despite the language in his MFR, (b) (6) did not conduct a legal/ethics review of (b) (6) draft book (Exhibit 79, p. 109; Exhibit 151).

<sup>35</sup> (b) (6) testified that the ethics review concerned whether (b) (6) could use (b) (6) military title in draft book, and whether (b) (6) could accept compensation for it (Exhibit 79, pp. 83-84).

<sup>36</sup> In discussing who would conduct the OPSEC review, (b) (6) testified as follows:

(b) (6)

[REDACTED]



(b) (6) did not grasp the scope or depth of the required OPSEC review,<sup>37</sup> or how the required OPSEC review related to the required security review.<sup>38</sup>

(b) (6) understood that AR 530-1 required (b) (6) supervisor and the command's OPSEC officer to review (b) (6) draft book prior to publication (Exhibit 79, pp. 42-45), and he acknowledged that he conducted an OPSEC review of the draft book because he was (b) (6) supervisor, (b) (6) (Exhibit 79, pp. 10-15, 42-45). Unfortunately, (b) (6) did not fully understand the need for a second OPSEC review by a qualified OPSEC officer,<sup>39</sup> or the necessity to go outside the 94<sup>th</sup> DIV for that review since the 94<sup>th</sup> DIV did not have a qualified OPSEC officer<sup>40</sup> (Exhibit 79, pp. 47-48, 60, 115-116). In addition, (b) (6)

(b) (6)

(Exhibit 86, pp. 23-24).

<sup>37</sup> (b) (6) repeatedly testified that (b) (6) thought only a " cursory review" was required, and that is what (b) (6) did (Exhibit 86, pp. 55, 126, 148).

<sup>38</sup> Despite (b) (6) repeated assertions that a security review was not required (Exhibit 86, pp. 53-54; Exhibit 150, p. 52), (b) (6) stated in (b) (6) 21 November 2010 interview that (b) (6) was looking for "a security review from the first-line supervisor and an OPSEC review" (Exhibit 86, p. 23). (b) (6)

(Exhibit 86, p. 96).

<sup>39</sup> (b) (6) acknowledged that the 94<sup>th</sup> DIV did not have an OPSEC officer (Exhibit 79, pp. 47, 116), and that he did not consult anyone at the 80<sup>th</sup> TC (Exhibit 79, pp. 48, 60, 116). Instead, he chose to substitute (b) (6) review for the second OPSEC review and testified that he and (b) (6) "did the best that [they] could with the information that [they] had" (Exhibit 79, p. 48).

<sup>40</sup> (b) (6) did not attempt to contact the 80<sup>th</sup> TC's OPSEC officer, (b) (6), or the USARC G2, even though the 94<sup>th</sup> DIV did not have either an G2 or an OPSEC officer of its own (Exhibit 79, pp. 45-47, 60, 71, 77, 99, 101-102, 111-112, 115-116; Exhibit 111, p. 35).

<sup>41</sup> (b) (6) testified that his review of (b) (6) draft book was limited to identifying material that appeared "suspicious," "out of the ordinary" or "not appropriate in nature" (Exhibit 79, pp. 19, 44, 73-74, and 110-111; Exhibit 111, p. 28). (b) (6)

(Exhibit 79, 12-16, 19-20, 52, 83, 73-74, 79-81, 89-91, 101-102, and 111; Exhibit 111, pp. 29-32, 35). He did not conduct any independent research, and he did not consult anyone who could have actually advised him regarding whether release of the material would violate AR 530-1.

<sup>42</sup> (b) (6) (Exhibit 79, pp. 46), he did not understand the requirement to coordinate with the public affairs staff prior to the any release of official information to the

- **Public Affairs/Information Security Review:**

(b) (6)

(b) (6) did not know that DoDD 5230.09 superseded AR 360-1, paragraphs 6-6c and 6-6d, because (b) (6) did not review DoDD 5230.09,<sup>43</sup> or the implementing instruction (i.e., DoDI 5230.29), even though AR 360-1 specifically mentions DoDD 5230.09 multiple times.<sup>44</sup> As a result, (b) (6) incorrectly concluded that (b) (6) draft

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public outlined in paragraph 2-3a(14), nor did he understand the possible need to conduct a classification review pursuant to paragraph 5-2b.

<sup>43</sup> In (b) (6) 21 November 2010 interview, (b) (6) testified as follows regarding (b) (6) failure to review DoDD 5230.09:

(b) (6)



(Exhibit 86, pp. 145-146).

<sup>44</sup> AR 360-1, paragraph 5-1, states that: "Department of Defense policy requires any official information intended for public release that pertains to military matters, national security issues, or subjects of significant concern to the DOD be cleared by appropriate security review and PA offices prior to release."



book was (b) (5) (Exhibit 86, p. 35; see also, Exhibit 86, 38-39, 53, 145-149, 161; Exhibit 150, pp. 90-91).<sup>45</sup>

(b) (6) (b) (6) (b) (6) assumed that the two reviews were the same (Exhibit 86, p. 96). In addition, while (b) (6) generally understood the purpose of non-disclosure agreements (NDAs), (b) (6) did not ask (b) (6) whether (b) (6) had signed one with DIA<sup>46</sup> (Exhibit 86, pp. 72-74, 79, 110-113).

(b) (6)

Like (b) (6), (b) (6) was not aware of the pre-publication review requirements in DoDD 5230.09 and DoDI 5230.29.<sup>47</sup> As a result, (b) (6) also (b) (6) (Exhibit 79, p. 44; see also Exhibit 79, p. 97 and Exhibit 111, p. 22).

Like (b) (6), (b) (6) did not understand the difference between an OPSEC review and a security review for classified information (Exhibit 79, p. 109). In addition, he was not familiar with AR 380-5 (Exhibit 111, p. 37). Finally, like (b) (6), (b) (6) did not think to ask (b) (6) whether (b) (6) had signed one (Exhibit 79, pp. 58-59; Exhibit 111, p. 13).

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This includes materials placed on the Internet or released via similar electronic media. **See DODD 5230.9 for additional guidance.** (emphasis added). In addition, AR 360-1, paragraph 6-1b, states that: "Clearance, through security review and PA channels, is required for all official speeches and writings that are presented or published in the civilian domain, to include materials placed on the Internet or released via similar electronic media. **See DODD 5230.9 and chapter 5 of this regulation for additional information and guidance on releasing information.**" (emphasis added).

<sup>45</sup> One of the critical clearance requirements that (b) (6) concluded was inapplicable to (b) (6) draft book was the requirement in AR 360-1, paragraph 6-1, to obtain HQDA and DoD clearance "for all...manuscripts... containing information or otherwise meeting the criteria outlined in paragraph 5-3," including, but not limited to, "[i]nformation that is or has the potential to become an item of national interest or international interest;" "[i]nformation and public statements with foreign policy or foreign relations implications;" "[i]nformation and public statements concerning high-level military or DOD policy;" "[i]nformation concerning U.S. Government policy or policy within the purview of other Government agencies;" "[i]nformation on subjects of potential controversy among the military Services or with other Federal agencies;" and "[i]nformation on significant military operations, potential operations, operations security (OPSEC), and military exercises." Instead, (b) (5), (b) (6) (Exhibit 86, pp. 55, 59, 67, 82, 86, 95, 148; Exhibit 150, pp. 86, 91; Exhibit 171).

<sup>46</sup> (b) (6) testified that (b) (6) (Exhibit 86, pp. 111-112).

<sup>47</sup> (b) (6) acknowledged that he and (b) (6) did not know about DoDD 5230.9 during both his 30 November 2010 interview and his 6 February 2011 interview (Exhibit 79, pp. 44, 97-98; Exhibit 111, p. 22).

## ISSUE 9G: WHAT LEGAL ADVICE WAS PROVIDED TO THE REVIEWERS AND OR APPROVING AUTHORITY REGARDING THE NATURE AND SUFFICIENCY OF THE PRE-PUBLICATION REVIEW OF THE DRAFT BOOK?

### FINDING 9G:

(b) (6), the Deputy Staff Judge Advocate at the 80<sup>th</sup> Training Command (80<sup>th</sup> TC), advised (b) (5) and (b) (6), a civilian attorney at the U.S. Army Reserve Command (USARC), Office of the Staff Judge Advocate (OSJA) advised (b) (5). In addition, one of (b) (6) subordinates, (b) (6), provided (b) (6) with information regarding the misuse of a person's official position; the exceptions to the general prohibition against using one's official title or position in connection with the person's personal teaching, speaking, or writing activities; and the prohibition against misusing non-public information to further a private interest.

The only person from whom (b) (6) received legal advice regarding the nature and sufficiency of the pre-publication review was (b) (6), who generally advised (b) (6) that: (b) (5)

Unfortunately, both (b) (6) and (b) (6) also relied upon non-legal advice regarding the nature and sufficiency of the pre-publication review from (b) (6), who provided the following erroneous or misleading advice:

- AR 530-1 was the regulation that governed the pre-publication review process;
- Altering minor details, such as names, locations, or the number of personnel in a safe house, can make classified information unclassified;
- The fact that information can be found in an "open source" (e.g., a media article or book) can make classified information unclassified;
- The fact that information is confirmed by a third party can make classified information unclassified; and
- Classified information ceases to be classified after five years;

### ANALYSIS 9G:

(b) (6) consulted members of (b) (6) Judge Advocate General's Corps (JAG Corps) technical chain (b) (5) (Exhibit 86, pp. 24-31).



(b) (6) sent (b) (6) an email on 19 March 2009, in which (b) (5), (b) (6) (Exhibit 157). (b) (6) then asked (b) (6) (b) (5), (b) (6) (Exhibit 157). (b) (6) responded by email the same day, advising (b) (5), (b) (6) (Exhibit 158). (b) (6) also recommended that (b) (6) (b) (5), (b) (6) (Exhibit 158).

Based on (b) (6) advice, (b) (6) contacted (b) (6) by telephone on or about 30 March 2009 and spoke to (b) (6) for approximately 10 minutes (Exhibit 86, pp. 26-28). At that time, (b) (6) advised (b) (5), (b) (6) (Exhibit 86, p. 29).

(b) (6) did not contact anyone at The Judge Advocate General's Legal Center and School (TJAGLCS), the Office of The Judge Advocate General (OTJAG), or the Department of the Army (DA) for guidance regarding the pre-publication review requirements (Exhibit 86, p. 30), but (b) (6) did task (b) (6) (b) (5)

(Exhibit 122). In response, (b) (6) provided information regarding the first issue to (b) (6) on 4 December 2009, but (b) (6) indicated that (b) (6) was (b) (5)

<sup>48</sup> Although (b) (6) response was dated 19 March 2009, (b) (6) testified that (b) (6) did not receive it until 30 March 2009 (Exhibit 86, p. 27).

<sup>49</sup> (b) (6) also quoted AR 530-1, paragraph 2-1g, which states:

g. Consult with their immediate supervisor and their OPSEC Officer for an OPSEC review prior to publishing or posting information in a public forum.

(1) This includes, but is not limited to letters, resumes, articles for publication, electronic mail (e-mail), Web site postings, web log (blog) postings, discussion in Internet information forums, discussion in Internet message boards or other forms of dissemination or documentation.

(2) Supervisors will advise personnel to ensure that sensitive and critical information is not to be disclosed. Each unit or organization's OPSEC Officer will advise supervisors on means to prevent the disclosure of sensitive and critical information.

(Exhibit 158).

(b) (5), (b) (6)

(b) (6) (Exhibit 153).

Based on the above research, (b) (6) that:

- (b) (5)

<sup>51</sup> (b) (6) acknowledged in (b) (6) interview he did not recall (b) (6) ever actually using the word “fiction” in reference to his book (Exhibit 86, pp. 43, 65). However, he said he believed the book was essentially fiction based on assertions by (b) (6) that the details regarding the subject matter were substantially changed, and that “95 percent” of the book was really written by the ghostwriter (Exhibit 86, pp. 16, 39, 43). As part of the assurances (b) (6) gave during the review process, (b) (6) did tell (b) (6) that names and operational details had been changed (Exhibit 144). (b) (6) also made several statements during (b) (6) interview, in which (b) (6) implied that the book was essentially the work of the ghostwriter, rather than (b) (6) – which indicates that (b) (6) probably made similar representations to (b) (6) (Exhibit 71, pp. 82-83, 116, 131). (b) (6) also made similar representations when confronted by DIA/DoD after their attention had been drawn to (b) (6) book (Exhibit 249). However, (b) (6) also acknowledged several times during (b) (6) interview that the book related to (b) (6) personal, first-hand experiences; that the book represents that it is a first-hand account of (b) (6) experiences; that (b) (6) had first-hand knowledge of the information (b) (6) was finding in open sources, and that (b) (6) role was to “validate” (IO’s word) what (b) (6) found; and that (b) (6) is promoting the book to be truth based at least in part on (b) (6) own experiences. E-mails (b) (6) sent during the book review process generally characterize the book as a record of (b) (6) experiences, rather than a work of fiction (Exhibits 121, 168). (b) (6) acknowledged that “[t]his was a work of non-fiction” that were “based on (b) (6) experiences” and were “presented as factual” (Exhibit 130, p. 7). (b) (6) role, as (b) (6) described it, was to be “someone with writing skill who could help shape a narrative...out of (b) (6) experiences” (Exhibit, p. 35). Questioning of (b) (6) confirmed that the substance of the book was essentially generated based on both (b) (6) recollections and/or the journal (b) (6) kept while deployed, and (b) (6) online research (Exhibit 130, pp. 16-21, 24-27). Other people that (b) (6) or (b) (6) contacted regarding the book generally corroborated what (b) (6) provided; gave non-operationally related facts for purposes of atmosphere or “color;” or provided minor stylistic input such as correction of typos (Exhibit 119; 130, pp. 9-12, 16-18, 19-21; Exhibit 174, pp. 19-20; Exhibit 204; Exhibit 206).

<sup>52</sup> BG Le Doux specifically recalls (b) (6) advising her that (b) (5), (b) (6) (Exhibit 115, p. 17).



(b) (5)

(b) (6) Other than (b) (6) and (b) (6) ghostwriter, the only person (b) (6) consulted regarding the pre-publication review of (b) (6) draft book was (b) (6) (Exhibit 79, pp. 19-20, 48-49; Exhibit 111, pp. 9-10).

(b) (6) testified that (b) (6), (b) (5) (Exhibit 86, pp. 24, 147-148). In addition, (b) (6) testified that (b) (6), (b) (5) (Exhibit 86, p. 35).

(b) (6) testified that he consulted (b) (6) regarding both the legal review and the "security" review<sup>56</sup> (Exhibit 79, pp. 19-22, 43-44, 48-49, 109; Exhibit 111, pp. 9-11). (b) (6) confirmed that (b) (6) advised (b) (5) but they agreed to read through the draft book and provide comments regarding anything they felt was "suspicious" or "not appropriate in nature," (b) (6) either an OPSEC review of a security review for classified information (Exhibit 79, p. 44).

(b) (6) advised (b) (6) and (b) (6) that (b) (6) book required an OPSEC review pursuant to AR 530-1, but (b) (6) did not mention the additional pre-publication review requirements mandated by DoDD 5230.09, DoDI 5230.29, or AR 350-1.

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<sup>53</sup> (b) (6) also indicated that he "discussed" (b) (6) book with the 80<sup>th</sup> TC's Public Affairs Officer, (b) (6) but the content of that discussion is not clear (Exhibit 79, p. 70; Exhibit 111, p. 10).

<sup>54</sup> (b) (6) confirmed that these conversations took place (Exhibit 79, pp. 49-50; Exhibit 9-10).

<sup>55</sup> (b) (6) testified that (b) (6) which is consistent with what (b) (6) told him (Exhibit 79, pp. 44, 97; Exhibit 111, p. 36).

<sup>56</sup> (b) (6) (b) (6) (Exhibit 79, p. 109). (b) (6)

On 17 March 2009, (b) (6) sent BG (b) (6), (b) (6) (b) (6) an e-mail to advise them that (b) (6) had entered into a contract to write a book about (b) (6) (b) (6) (Exhibit 121). In that e-mail, (b) (6) also provided advice regarding the pre-publication review requirements, stating:

I will be writing the book as a (b) (6) – but according to Army Regulation 530-1, OPSEC, 19 Apr 07, the work must be reviewed prior to publication. Para 2-1.g provides guidance on this issue and stipulates that my supervisor and command OPSEC officer review before publication... we do not have an OPSEC officer yet, but I plan to work with (b) (6) on this issue to make sure my work is properly reviewed prior to publication....<sup>58</sup>

(Exhibit 121).

In subsequent e-mails, (b) (6) repeatedly requested either a “classification review” or a “security review,” without ever advising (b) (6) or (b) (6) that a classification/security review is different from an OPSEC review. For example, in a 15 November 2009 e-mail, (b) (6) asked (b) (6) whether (b) (6) wanted to review “the final manuscript with changes” for (b) (6) “classification review” (Exhibit 169); in a 30 November 2009 e-mail, (b) (6) expressed (b) (6) desire for (b) (6) “to complete the classification review of [his] novel” prior to (b) (6) departure, so that (b) (6) could “sign off on it” as (b) (6) supervisor “per AR 530-1 OPSEC” (Exhibit 141); and, in a 27 December 2009 e-mail, (b) (6) requested (b) (6) concurrence and approval of (b) (6) manuscript “[p]er AR 530-1 OPSEC, and the requirement that my supervisor approve the overall OPSEC/Security review” (Exhibit 146).

(b) (6) also repeatedly advised (b) (6) and (b) (6) that the information in (b) (6) book was unclassified because (b) (6) had altered minor details, such as names, locations, or the number of personnel in a safe house; the information could be found in an “open source” (e.g., a media article or book); the information had been confirmed by a third party; or the information was more than five years old (Exhibits 141, 143-148). See Issue 11F for a detailed discussion regarding why (b) (6) advice was false, incorrect, or misleading.

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<sup>57</sup> BG Corson was the Commander of the 94<sup>th</sup> DIV at that time, and (b) (6) was the Secretary of the General Staff. (b) (6) (b) (6) were “courtesy copied” on the e-mail, which was addressed to BG (then COL) Corson (Exhibit 121).

<sup>58</sup> (b) (6) subsequently asked (b) (6) to provide him with “additional information in regards to what [the] requirement is and where [he could] start to look and see” (Exhibit 111, p. 9). In response, (b) (6) provided (b) (6) with a copy of AR 530-1 (Exhibit 111, p. 9).



**ISSUE 9H: DID ANY OFFICIALS OF THE 94<sup>TH</sup> DIVISION CONTACT OR ATTEMPT TO CONTACT OFFICIALS OF OTHER DOD COMPONENTS, TO INCLUDE THE DEFENSE INTELLIGENCE AGENCY (DIA) OR THE U.S. SPECIAL OPERATIONS COMMAND, TO COORDINATE ON THE PRE-PUBLICATION REVIEWS CONDUCTED OF (b) (6) BOOK?**

**FINDING 9H:** No.

**ANALYSIS 9H:** As indicated in response to Issue 9B, above, the only the 94<sup>th</sup> Div officials involved in the pre-publication reviews of (b) (6) book were (b) (6) and (b) (6) and (b) (6)

(b) (6)

(Exhibit 86, p. 120).

(b) (6)

**ADDITIONAL ISSUE 9I: WHAT REVIEW OF (b) (6) BOOK SHOULD HAVE OCCURRED?**

**FINDING 9I:** Upon receiving the manuscript, the 94th DIV should have forwarded it through command channels to the first unit in the chain of command with personnel qualified to conduct the required pre-publication reviews. As the manuscript contained information the release of which was withheld to DoD, the manuscript should have been

(b) (6)

forwarded through the Chief, Army PAO, to the DoD OSR for decision. (b) (6) had an independent, parallel obligation to submit the manuscript to DIA for review pursuant to (b) (6) (b) (6)

**ANALYSIS 9I:** DoDD 5230.09 and DoDI 5230.29 obligate service members and units to submit a publication for DoD-level review and approval – even a publication authored by Reserve Component personnel – if the publication contains certain specified types of official DoD information.<sup>60</sup> The manuscript at issue clearly contained information of the sort withheld to the DoD-level release authority.<sup>61</sup> The obligations created by these authorities clearly superseded any contrary language in AR 360-1 (2000). They also established a requirement for a preliminary review by appropriate Army organizations prior to submission to DoD.<sup>62</sup> Accordingly, (b) (6) was obligated to submit (b) (6) manuscript through local unit channels for a full pre-publication review.

Upon receipt of the manuscript, the 94th DIV's leadership and appropriate staff personnel were required to ensure that the manuscript received proper PAO, OPSEC, information security, policy, and government ethics reviews from qualified personnel.<sup>63</sup> Where qualified personnel were not available at the local unit level, coordination with the unit's higher headquarters was required to obtain a proper review. As part of the process of obtaining a review from qualified personnel, coordination with those organizations that originated and/or classified the potentially sensitive information at issue was also required in order to ensure that those entities had the opportunity to conduct their own appropriate reviews.<sup>64</sup> Upon completion of these reviews, (b) (6) chain of command was required to forward the manuscript to the Chief, Army PAO with a recommendation as to disposition.<sup>65</sup> The Army PAO would have then been required to conduct a complete review at its level, and either disapprove the publication or forward it to DoD for final action.<sup>66</sup>

There was a parallel obligation for (b) (6) to ensure that his manuscript was submitted to DIA for review. (b) (6) had previously (b) (6) (b) (6) required (b) (6) to get approval from the last agency to "grant (b) (6) access" (b) (6)

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<sup>60</sup> See Issue 8, footnotes 1-19, and accompanying text.

<sup>61</sup> See Classified Annex.

<sup>62</sup> See Issue 8, footnotes 13-15 and accompanying text.

<sup>63</sup> See Issue 8, footnotes 13-14, 21-25, 37-58, 73-76, and accompanying text.

<sup>64</sup> See Issue 8, footnotes 25, 60-66, and accompanying text.

<sup>65</sup> See Issue 8, footnotes 13-15 and accompanying text.

<sup>66</sup> See Issue 8, footnotes 15-16 and accompanying text.

<sup>67</sup> See Issue 8, footnote 67 and accompanying text. See also Exhibit 234.



(b) (6) ”<sup>68</sup> DIA was the last agency to grant (b) (6) (234). Accordingly, (b) (6) had a personal duty to ensure that DIA had reviewed and approved (b) (6) manuscript.<sup>70</sup>

#### **ADDITIONAL ISSUE 9J: WHY DID AN APPROPRIATE REVIEW OF (b) (6) BOOK NOT OCCUR?**

##### **FINDING 9J:**

(b) (6). The primary reason that an appropriate review of (b) (6) book did not occur is because (b) (6) deliberately tried to circumvent DIA’s review of (b) (6) manuscript.<sup>71</sup> Specifically, (b) (6) tried to avoid DIA scrutiny by seeking review exclusively from (b) (6) chain of command; convincing (b) (6) and (b) (6) that information in the book was unclassified based on improper criteria; and failing to ensure that the 94th DIV coordinated with DIA in conducting its review.

80th TC and 94th DIV Personnel. (b) (6) book also failed to receive an appropriate review (b) (6) (b) (6), most notably (b) (6)

(b) (6)

<sup>68</sup> See Issue 8, footnote 68 and accompanying text.

<sup>69</sup> See Issue 8, footnotes 69 and accompanying text.

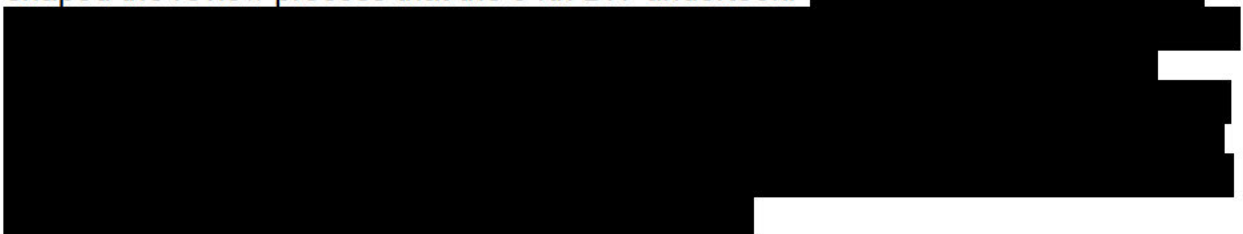
<sup>70</sup> See Issue 8, footnotes 67-70 and accompanying text.

<sup>71</sup> It is reasonable to conclude that (b) (6) actions were deliberate based on: (a) (b) (6) long experience in the intelligence community; (b) the fundamentality and notoriety of intelligence community rules concerning declassification and pre-publication review; (c) (b) (6) acknowledged, long-held belief that DIA is strongly biased against (b) (6) (d) (b) (6) contemporaneous statements regarding (b) (6) intent to avoid DIA review; and (e) (b) (6) demonstrated tendency to engage in deceptive practices for (b) (6) personal and professional benefit.

<sup>72</sup> Interestingly, (b) (6) was a member of the intelligence community in his civilian capacity at the time of 94th DIV’s review (Exhibit 131, p. 44).

(b) (6)

Aside from (b) (6) input, it was (b) (6) research and advice that primarily shaped the review process that the 94th DIV undertook. (b) (6)



(b) (6)





## ANALYSIS 9J:

(b) (6). The primary reason why (b) (6) manuscript did not receive a proper pre-publication review is because (b) (6): (1) intentionally sought review exclusively from (b) (6) Army Reserve chain of command when direct coordination with DIA was also required; (2) deliberately mislead the 94th DIV personnel who were conducting the review of (b) (6) book by telling them that the information in the book was unclassified because it had appeared in open sources; and (3) failed to ensure that the unit's review process included necessary coordination with DIA. Each of these actions by (b) (6) is discussed in greater detail below.

(b) (6) Was Required to Coordinate Pre-Publication Review of (b) (6) Book Directly With DIA. (b) (6) claimed that (b) (6) understanding, based on the advice of (b) (6) attorney, was that (b) (6) needed to submit (b) (6) manuscript only to (b) (6) chain of command, as they were the last organization to (b) (6)

(Exhibit 71, pp. 94, 96-97). However, the pre-publication review obligation created by (b) (6) NDA did not depend on what organization last granted him a clearance—it depended on what agency last granted him access to (b) (6)—and that organization was DIA.<sup>74</sup> Therefore, (b) (6) had an independent obligation to ensure that (b) (6) obtained DIA authorization to publish (b) (6) book, regardless of the pre-publication review process (b) (6) was directed to follow by the 94th DIV. The fact that (b) (6) attorney may have given (b) (6) incorrect advice regarding this obligation is irrelevant. (b) (6) is still responsible for the potential consequences of (b) (6) failure to comply with it.

(b) (6) was also advised by (b) (6) that, (b) (5) (Exhibit 86, p. 35). As noted above, however, (b) (6) NDAs would have required (b) (6) to obtain DIA approval, independent of the AR 360-1 (2000) requirements. Because (b) (6) did not consider the possibility that (b) (6) had signed (b) (6) with DIA when (b) (6) advised (b) (6),<sup>77</sup> the burden of recognizing the

<sup>73</sup> (b) (6) (Exhibit 71, p. 252).

<sup>74</sup> See Issue 8, footnotes 67-70, and accompanying text.

<sup>75</sup> When asked during (b) (6) interview why (b) (6) consulted with (b) (6) civilian attorney, as opposed to a member of the intelligence community, (b) (6) equivocated and avoided answering the question (Exhibit 71, pp. 231-32).

<sup>76</sup> (b) (6) said (b) (6), (b) (5) (Exhibit 86, p. 35).

<sup>77</sup> Although (b) (6) is generally familiar with NDAs (Exhibit 86, pp. 72, 110-11, 112), he claimed that he never discussed NDAs with either (b) (6) (Exhibit 86, pp. 74-75, 79, 111-12;



significance of the (b) (6), and seeking advice regarding their impact on the review process, fell to (b) (6). Apparently, (b) (6) failed (or declined) to do so.

(b) (6) Inaccurately Represented to the 94th DIV Reviewers that Material Appearing in Open Sources Was Necessarily Unclassified. (b) (6) claimed that (b) (6) had no visibility over the exact review process (b) (6) employed (Exhibit 71, pp. 124, 126, 129, 130, 134, 136, 227, 230-31, 252); that (b) (6) had no idea who they were or were not consulting (Exhibit 71, pp. 124, 129, 134, 136); that (b) (6) assumed (b) (6) would contact anyone whose input was required (Exhibit 71, p. 114); and that (b) (6) simply followed the guidance (b) (6) unit gave (b) (6) in getting (b) (6) book reviewed<sup>80</sup> (Exhibit 71, pp. 113, 119-120, 127, 129, 222, 227, 294). (b) (6) stated that he believed (b) (6) was conducting a security review (Exhibit 71, pp. 111, 134),<sup>81</sup> and that (b) (6) told (b) (6) that they had sought "guidance from higher" (Exhibit 71, p. 114). However, (b) (6) also admitted that (b) (6) were relying exclusively on (b) (6) representations that information appearing in open sources is not classified in conducting their reviews<sup>82</sup> (Exhibit 71, pp. 132, 133, 225-26). As discussed above,

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Exhibit 150, pp. 26, 48). According to (b) (6) (b) (6) (Exhibit 86, pp. 73-75). According to (b) (6) (b) (6) (Exhibit 79, p. 59; Exhibit 111, p. 13).

<sup>78</sup> (b) (6) and (b) (6) confirmed that (b) (6) involvement in the review process was limited to (b) (6) assurances that specific matters of concern were available in open sources or otherwise purportedly unclassified (Exhibit 150, pp. 53, 56; Exhibit 111 p. 12).

<sup>79</sup> (b) (6) specifically stated that (b) (6) and (b) (6) told (b) (6) they had gotten "guidance from higher" (Exhibit 71, p. 114), and they may have done so based on (b) (6) coordination with (b) (6) at 80th TC and (b) (6) at USARC.

<sup>80</sup> (b) (6) told (b) (6) that the book "needed to go through a security review" (Exhibit 130, pp. 40, 46), but (b) (6) did not discuss the specifics of the process with her (Exhibit 130, p. 46). (b) (6) also never talked to her about going to DIA (Exhibit 130, pp. 46-47).

<sup>81</sup> (b) (6) claimed that (b) (6) Exhibit 71, pp. 118, 124, 130, 136, 294); however, (b) (6) argument is specious because neither (b) (6) (b) (6) are intelligence officers. (b) (6) is a logistician and (b) (6) is a judge advocate.

<sup>82</sup> Particularly telling is a 27 July 2010 e-mail from (b) (6) to (b) (6), in which (b) (6) discusses the 94th DIV's pre-publication review process wholly in terms of the unclassified sourcing (b) (6) provided to (b) (6) and (b) (6) (Exhibit 184). (b) (6) specifically notes that (b) (6) (Exhibit 184) (emphasis added). In an e-mail to (b) (6) attorney sent the same day, (b) (6) described (b) (6) thinking regarding 94th DIV's review process as follows:

(b) (5), (b) (6)



(b) (6) representations to that effect were unquestionably relied upon by (b) (6) and (b) (6)

It is absolutely clear that, in the absence of an official release decision rendered by appropriate authority, classified information does not lose its classified status simply by virtue of its appearance in open sources. See AR 380-5, Chapter 3; AR 530-1, paragraph 2-1c(2). (b) (6) knew this, or at least (b) (6) should have known it. To begin with, regulatory language noting the continued sensitive nature of controlled information found in open sources appears in AR 530-1, which is the same regulation that (b) (6) first brought to the attention of the 94th DIV command group when seeking a pre-publication review (Exhibits 121 and 312). In fact, the language noting that the compromise of classified information does not necessarily declassify it appears on the same page of the regulation as the paragraph (b) (6) referenced in (b) (6) 17 March 2009 e-mail to BG (b) (6) (Exhibits 121 and 312).<sup>83</sup> Furthermore, the AR 530-1 language in question expressly cautions against acknowledgment or republication of such compromised information, stating: "Do not publicly reference, disseminate, or publish critical or sensitive information that has already been compromised as this provides further unnecessary exposure of the compromised information and may serve to validate it." See AR 530-1, paragraph 2-1c(2).<sup>84</sup>

In addition, the intelligence community members interviewed during the investigation acknowledged this to be a fundamental and well-known rule of information security (*i.e.*, that the mere appearance in an open source does not render information unclassified or

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(b) (5), (b) (6)

(b) (5), (b) (6)

(b) (6)

<sup>84</sup> Note the following language from the same paragraphs in AR 360-1 (2000) upon which (b) (6) relied: "Information that appears in open sources does not constitute declassification. The combination of several open source documents may result in a classified document." AR 360-1 (2000), paragraph 6-6c. Given (b) (6) heavy reliance on the paragraph containing this language, and (b) (6) apparent discussions with (b) (6) regarding AR 360-1 (2000), (b) (6) certainly knew or should have known of this language too.



otherwise eliminate any required special handling)<sup>85</sup> (Exhibit 174, p. 47; Exhibit 213, pp. 34-36). Although (b) (6) claims to have relied on the advice of (b) (6) attorney that (b) (6) open source materials could not be considered classified, (b) (6) statements in this regard appear to contradict (b) (6) claims.<sup>86</sup> Regardless, to the extent that (b) (6) claims to have received inaccurate guidance from (b) (6) civilian counsel, this clearly cannot shield (b) (6) from the consequences of (b) (6) reliance on such misinformation. However, given (b) (6) extensive experience and qualifications in the intelligence field (Exhibit 71, pp. 10-27, 62-65, 117-18, 119; Exhibit 138), (b) (6) cannot credibly deny that (b) (6) knew, or should have known, this fundamental tenet of information security.

(b) (6) Allowed 94th DIV's Review to Proceed Despite Knowing that Required Coordination Was Not Taking Place. Despite (b) (6) claimed ignorance of the review process employed by (b) (6) and (b) (6),<sup>87</sup> (b) (6) was aware at the time the review being conducted that neither (b) (6) nor (b) (6) was involved in any coordination with DIA or other intelligence community entities. As noted previously, pre-publication review of information from outside the reviewing command requires coordination with the organization(s) that originated the information.<sup>89</sup> (b) (6) DIA NDAs required (b) (6) to obtain DIA authorization before (b) (6) could release any DIA-related information.<sup>90</sup> Like the rule regarding the continued classification of information appearing in open sources, members of the intelligence community who were interviewed during this investigation recognized that they were subject to an ongoing obligation to seek pre-publication release by qualified personnel from their particular organization<sup>91</sup> (Exhibit 174, pp. 20-22, 25, 33-35; Exhibit 213, pp. 35-36). Accordingly, (b) (6) knew or should have known that (b) (6) had an obligation to ensure appropriate organizations cleared any information in (b) (6) book that the 94th DIV

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<sup>85</sup> Even BG Le Doux, who does not have an intelligence background, immediately noted, upon hearing (b) (6) "open source" rationale, that "[t]he fact that it's out there in the open domain doesn't necessarily mean that it's not classified," and that someone of (b) (6) background and experience should have understood that (Exhibit 115, p. 25).

<sup>86</sup> During (b) (6) interview, (b) (6) said: "[I]nformation is not declassified simply because it's in the public domain. Not in the slightest" (Exhibit 71, p. 271). During (b) (6) interview, (b) (6) said: "[W]e can stipulate [that appearance in open sources] does not change the classification nature of [information]. It still remains classified" (Exhibit 130, p. 39).

<sup>87</sup> See footnotes 78-81, *supra*, and accompanying text.

<sup>88</sup> See footnote 82, *supra*, and accompanying text.

<sup>89</sup> See footnotes 73-79, *supra*, and accompanying text.

<sup>90</sup> See footnotes 80-82, *supra*, and accompanying text.

<sup>91</sup> (b) (6) immediately acknowledged this requirement was "basic," even though he is a member of the special operations community, rather than the intelligence community (Exhibit 191, p. 26).



would have had no cognizance over. Despite (b) (6) knowledge that the 94th DIV was conducting no such coordination, however, (b) (6) took no corrective action.

(b) (6) Improper Acts and Omissions Related to this Pre-Publication Review Were a Deliberate Attempt to Avoid DIA Scrutiny of (b) (6) Book. It is evident from the foregoing that (b) (6) committed several serious missteps regarding the pre-publication of (b) (6) book. Given (b) (6) level of experience and training (Exhibit 71, 10-27, 62-65, 117-18, 119; Exhibit 138), it is difficult to believe that this was the result of mere negligence. Therefore, the possibility that (b) (6) deliberately sought this improper pre-publication review from (b) (6) Army Reserve chain of command in order to avoid DIA scrutiny of (b) (6) manuscript must be considered.

(b) (6) has made no secret of (b) (6) belief that DIA (b) (6) in retaliation for (b) (6) testimony before Congress concerning ABLE DANGER, and that DIA is carrying out an ongoing vendetta against (b) (6). These allegations are a constant thread through virtually every interview, e-mail and statement collected during this investigation.<sup>92</sup> (b) (6) has been making these claims consistently, including at the interview (b) (6) gave pursuant to this inquiry.<sup>93</sup> This strong, evident belief in a powerful and deep-seated bias against (b) (6) at DIA would, by itself, be enough to raise questions regarding (b) (6) motivations in resorting to non-DIA authorities to review a book concerning (b) (6) activities while employed by DIA.

In addition to this general evidence of (b) (6) (b) (6), certain conversations contemporaneous to the review of (b) (6) book indicate a deliberate ploy by (b) (6) to avoid DIA scrutiny. Over the course of the book's drafting, (b) (6) contacted a number of the former associates with whom (b) (6) had been deployed during the events described in the book, seeking their input (Exhibit 71, p. 126; Exhibit 168). One of these people was (b) (6) (b) (6) at the time and place (b) (6) was writing about (Exhibit 174, pp. 2-4, 9). (b) (6) was aware that (b) (6) was somehow affiliated with DIA during the deployment (Exhibit 174, pp. 9-10), and (b) (6) provided some input to (b) (6) regarding unclassified background detail for the book<sup>94</sup> (Exhibit 174, pp. 19-20). However, (b) (6) and (b) (6)

<sup>92</sup> Statements by (b) (6) to this effect – or statements by others indicating that (b) (6) has expressed such sentiments to them – appear throughout the evidence (Exhibit 71, pp. 41, 49, 50-53, 236-37, 247-48, 289-90; Exhibit 86, pp. 109-110, 114-116; Exhibit 114, pp. 6-7; Exhibit 120, pp. 7, 9; Exhibit 130, pp. 45-46; Exhibit 150, pp. 38, 41, 42; Exhibit 174, pp. 27-28, 49; Exhibit 191, pp. 53-54; and Exhibits 33, 37 (pp. 32, 34-37, 75, 84); 41, 70, 75, 76, 77, 80, 81, 87, 88, 89, 94, 162, 163, 166, 186, 188, 210, 242, 258).

<sup>93</sup> When asked what agency (b) (6) believes is (b) (6) unhesitatingly responded, "Defense Intelligence Agency" (Exhibit 71, p. 289). When asked if there are any particular personnel at DIA who are after (b) (6) said (b) (6) and (b) (6) immediately listed the names of several of the (b) (6) (Exhibit 71, pp. 289-90).

<sup>94</sup> (b) (6) noted that (b) (6) occasionally "hinted around" trying to get (b) (6) to bless off on certain things as being unclassified, but (b) (6) rebuffed such attempts (Exhibit 174, p. 28).



also discussed the book's pre-publication review requirements on several occasions—in part because (b) (6) had been considering authoring a book (b) (6) (Exhibit 174, pp. 22, 26-27). These conversations are extremely significant, as they give a view into (b) (6) thought processes regarding the pre-publication review in the context of a dialogue with someone (b) (6) apparently considered to be a trusted peer.<sup>96</sup>

According to (b) (6), when he and (b) (6) discussed the review process, (b) (6) shared his understanding that if (b) (6) were to author a book, then the pre-publication review “would have to go through my agency” (in his case, NSA) (Exhibit 174, pp. 26-27). Therefore, (b) (6) was understandably surprised when (b) (6) told him that (b) (6) intended to seek pre-publication review for (b) (6) own book solely from his Army Reserve chain of command<sup>97</sup> (Exhibit 174, p. 27), and immediately suspected this was not “the right thing to do” (Exhibit 174, p. 27). In their discussions, (b) (6) frequently expressed concern that (b) (6) “was going to have trouble with DIA getting anything approved,” and that (b) (6) “didn’t think DIA was (b) (6) friend, and that (b) (6) would never get anything through DIA” (Exhibit 174, pp. 27-28). Based on these conversations, it was “obvious” to (b) (6) that (b) (6) intent in seeking review by the 94th DIV was to “go...around (b) (6) DIA problem” (Exhibit 174, p. 27). The process (b) (6) described gave (b) (6) (b) (6) (Exhibit 174, p. 31). After learning that (b) (6) Army Reserve unit had apparently approved publication, (b) (6) immediately

<sup>95</sup> It is difficult to determine exactly when these conversations occurred; however, (b) (6) is included on the address line of a 20 September 2009 e-mail sent by (b) (6) to solicit input regarding (b) (6) book (Exhibit 168), so presumably these conversations started, or were ongoing, around this timeframe.

<sup>96</sup> It is actually possible that (b) (6) was shielding the full truth regarding (b) (6) activities to some extent, even in informal conversations with an apparently trusted associate. (b) (6) offered to review the entire manuscript, but (b) (6) only provided parts of it (Exhibit 174, p. 18). (b) (6) was under the impression that (b) (6) deliberately declined to send (b) (6) portions of the manuscript containing potentially sensitive information because (b) (6) feared (b) (6) might raise concerns with intelligence community personnel (Exhibit 174, pp. 45, 48). Assuming that (b) (6) conversations with (b) (6) were not completely open, (b) (6) strong conviction regarding (b) (6) apparent intent to deliberately avoid appropriate pre-publication review is even more remarkable.

<sup>97</sup> (b) (6) acknowledged that (b) (6) did tell (b) (6) that (b) (6) planned to seek pre-publication review through (b) (6) chain of command (Exhibit 71, p. 135). (b) (6) did not recall whether (b) (6) asked whether (b) (6) was going to submit the book to DIA (Exhibit 71, p. 135).

<sup>98</sup> (b) (6) denied having explicitly told (b) (6) that (b) (6) was surprised that the 94th DIV had approved (b) (6) book (Exhibit 71, p. 135), but their certainly conversations gave (b) (6) that impression.



notified appropriate personnel within NSA, (b) (6) (Exhibit 174, p. 32).

(b) (6) acknowledged that (b) (6) never directly indicated that (b) (6) was "dealing people that (b) (6) could...manipulate or [that] didn't understand the [review] system"<sup>100</sup> (Exhibit 174, p. 50). Despite the fact that (b) (6) never expressly acknowledged (b) (6) intent, however, (b) (6) was quite confident from the tone and content of their conversations that (b) (6) was deliberately skirting DIA review, stating: "I believe (b) (6) knew (b) (6) could not get [the book] through DIA, and the intelligence community would not be an easy sell and this was a way (b) (6) could get it done if (b) (6) could convince somebody to sign it" (Exhibit 174, p. 50). (b) (6) repeatedly stated (b) (6) belief that (b) (6) saw the 94th DIV review as a way to circumvent any potential DIA involvement (Exhibit 174, pp. 27, 32, 45, 48-49, 50). He agreed unequivocally that his impression from their conversations was that (b) (6) believed (b) (6) (Exhibit 174, p. 31-32, 51).

(b) (6) was sufficiently certain that (b) (6) had deliberately circumvented appropriate review that (b) (6) reported it on his own volition to NSA investigators, who subsequently examined NSA-related information in the book (Exhibit 174, pp. 52-54).

As noted above, (b) (6) has repeatedly made clear that (b) (6) believes DIA is engaged in an ongoing vendetta against (b) (6).<sup>102</sup> (b) (6) stated multiple times in conversations with (b) (6) that (b) (6) believed DIA would not approve the

<sup>99</sup> (b) (6) did not raised any such alarm earlier because (b) (6) believed someone in the reviewing command would involve DIA (Exhibit 174, pp. 49-50). (b) (6) reported (b) (6) activities to (b) (6), a DIA employee, who related: "(b) (6) told me that when he queried (b) (6) about [whether he had] cleared this with the...security folks... (b) (6) hemmed, hawed, backed off and then forwarded...a string of e-mails that (b) (6) had used within his...army reserve chain of command to get permission to publish the book. Dave then forwarded them to me, because...he said, this doesn't sound right" (Exhibit 177, p. 11).

<sup>100</sup> (b) (6) also denied in (b) (6) interview that (b) (6) considered (b) (6) and (b) (6) to be personnel (b) (6) could manipulate due to their lack of qualifications in the intelligence field (Exhibit 71, pp. 229-30). However, when (b) (6) was asked directly why (b) (6) did not realize that (b) (6) and (b) (6) did not understand the process because of their unquestioning acceptance of (b) (6) assurances regarding open sources, (b) (6) equivocated – re-hashing (b) (6) prior testimony that (b) (6) (Exhibit 71, 223-24).

<sup>101</sup> It is notable also that LTG (Ret). Patrick Hughes, a former DIA director and supervisor of (b) (6), arrived at conclusions similar to those reached by (b) (6) when asked why (b) (6) approached (b) (6) command for review, rather than DIA (Exhibit 214). LTG (Ret). Hughes was approached by (b) (6) to provide an endorsement for the book (b) (6) (Exhibit 214). Other members of the intelligence community, who were interviewed over the course of the investigation, also found (b) (6) actions indicative of deliberate avoidance of DIA review (Exhibit 213, pp. 35-36; Exhibit 177, pp. 18-19).

<sup>102</sup> See footnotes 87-88, supra, and accompanying text.



publication of (b) (6) manuscript.<sup>103</sup> The content of those conversations convinced (b) (6) that (b) (6) was deliberately avoiding DIA involvement by pursuing review through the 94th DIV. As an (b) (6) clearly knew or should have known that DIA clearance of the information in the manuscript was needed.<sup>105</sup> Despite this, (b) (6) did not seek DIA review (b) (6) and (b) (6) failed to take appropriate action to ensure that DIA review was obtained, despite knowing that (b) (6) and (b) (6) were not doing so. Instead, (b) (6) pressed (b) (6) and (b) (6) to approve publication of (b) (6) book unilaterally, based on (b) (6) repeated improper representations that information appearing in open sources was necessarily unclassified.

Assuming for the sake of analysis that (b) (6) acted out of ignorance (*i.e.*, that (b) (6) did not, in fact, know that review outside the 94th DIV was required, and that (b) (6) did not know that the mere appearance of information in open sources did not ensure its release was properly authorized), (b) (6) actions in this matter still constitute a (b) (6) (b) (6). However, given (b) (6) degree of experience and training (Exhibit 71, pp. 10-27, 62-65, 117-18, 119; Exhibit 138), the apparent indication of intent to deceive that (b) (6) demonstrated in (b) (6) contemporaneous communications,<sup>106</sup> and (b) (6) demonstrated track record of deception and manipulation,<sup>107</sup> I find that (b) (6) above-described actions and omissions in this case were deliberately undertaken in order to prevent the intelligence community from reviewing (b) (6) manuscript. (b) (6) told (b) (6) and (b) (6) precisely what (b) (6) needed them to hear in order to get them to sign documents (b) (6) could rely on to publish (b) (6) book, and (b) (6) deliberately declined to ensure that required coordination with DIA occurred, despite knowing that such reviews were not being obtained. Had (b) (6) sought appropriate review instead of placing (b) (6) own personal interest in publishing (b) (6) book ahead of (b) (6) duty to safeguard sensitive information, qualified personnel would have properly reviewed the manuscript, and any sensitive information in it would have been removed or declassified. Clearly, the fundamental cause of the unauthorized release of classified information which occurred in this case was (b) (6).

94th DIV and 80th TC Personnel. The secondary reason why (b) (6) manuscript did not receive proper review is because of (b) (6) (b) (6) among the leadership and staff of the 80th TC and the 94th DIV. Aside from (b) (6), (b) (6)

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<sup>103</sup> See footnotes 95-102, *supra*, and accompanying text.

<sup>104</sup> See footnotes 95-102, *supra*, and accompanying text.

<sup>105</sup> See footnotes 78-87, *supra*, and accompanying text.

<sup>106</sup> See footnotes 93-102, *supra*, and accompanying text.

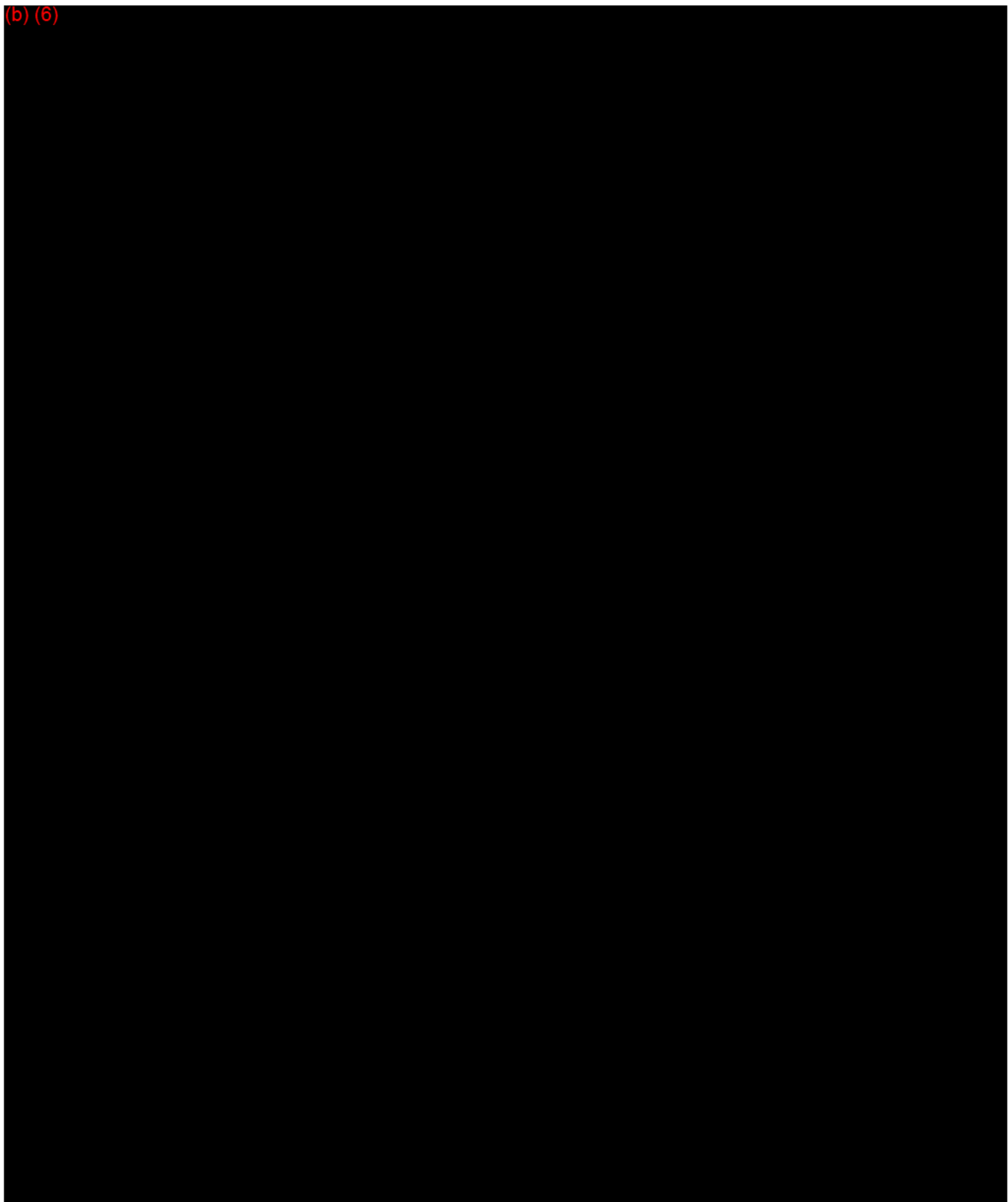
<sup>107</sup> See Report of investigation for issues 2, 6, 12, 13, 14, additional issue 7, and additional issue 8 which document this pattern.



(b) (6)

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(b) (6)

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(b) (6)





(b) (6)



(b) (6)





**ISSUE 10:** Did (b) (6) draft book contain classified information that was not approved for release by appropriate authorities?

**FINDING:** (b) (6) draft book contained classified information that was not approved for release by the appropriate authorities.

**ANALYSIS:**

(b) (6) submitted a draft manuscript for (b) (6) to (b) (6) publisher, (b) (6), as early as October 2009 (Exhibit 169). This draft manuscript contained classified information that was not approved for release by appropriate authorities (Exhibit 159). See Issue 13 for a more detailed discussion of this matter.

(b) (6) did not submit the draft manuscript to the Defense Intelligence Agency (DIA), the Department of Defense (DoD) intelligence community, or the Department of the Army for a pre-publication information security review, as required by applicable directives and regulations, including, but not limited to, DoD Directive 5230.09, *Clearance of DoD Information for Public Release*; DoD Instruction 5230.29, *Security and Policy Review of DoD Information for Public Release*, 8 January 2009; and DoD 5105.21-M-1, *Department of Defense Sensitive Compartmented Information Administrative Security Manual*; and the nondisclosure agreements (b) (6) signed during (b) (6) career (Exhibits 132, 233 and 353). See Issue 13 for a more detailed discussion of this matter.

The DIA subsequently conducted a classification review of (b) (6) book and identified over 125 excerpts that contained classified information. This classification review occurred after (b) (6) publisher distributed advance copies of the book to approximately 125-150 people, and posted select portions of the book on the internet. The DIA matrix for the classification review and the associated memorandum from the Director of DIA are classified documents, which are included in the Classified Annex of this report. See Issue 17 for a more detailed discussion of this matter.

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<sup>1</sup> On 29 October 2009, (b) (6) editor at (b) (6), sent (b) (6) an e-mail indicating that (b) (6) and (b) (6) had read the first draft of (b) (6) book (Exhibit 169). This e-mail also referenced information in the draft manuscript that was later deemed classified. On 15 November 2009, (b) (6) forwarded (b) (6) e-mail to (b) (6), stating: "There are no material changes to the book – just several editorial changes...(i.e., no new details of technology, methods or individuals – the base line is the same" (Exhibit 169).